IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 181 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTBHAI JIVANBHAI MARWADI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 181 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR NAGESH SUD AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 20/05/2003

ORAL JUDGEMENT

#. In this petition, the petitioner detenu has challenged the order of detention passed by the Police

Commissioner, Surat City dated 2.11.2002 detaining the petitioner by resorting the provisions of Subsection 2 of Section 3 of the Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "PASA Act" for short) and as per the committal order dated 2.11.2002, the petitioner was ordered to be detained at District Jail, Rajkot. As found from the grounds of detention, the Detaining Authority has considering the material placed before him and recorded satisfaction that the detenu is a confirmed 'bootlegger' and the Detaining Authority has relied upon one Prohibition case registered at Limbayat Police Station vide CR. No. 858 of 2002 for the offences punishable under Sections 66 (1) (b), 65 (e), 81 of the Prohibition Act and in the said case, the detenu was arrested on 16.9.2002 and the said case is pending for investigation. The other material in the form of statements of witnesses were also considered by the Detaining Authority and from the said material, the Detaining Authority has satisfied that because of the prejudicial activities of the detenu and with a view to prevent him from acting in such manner, it was necessary for him to detain the petitioner detenu by resorting the provisions of PASA Act. In the Prohibition case registered against the petitioner, it was a case of seizure of 1250 ltrs. of country liquor worth Rs.25,000=00 seized. Two statements of witnesses were recorded by the police on 13.10.2002 and 14.10.2002 and in these two statements, witnesses have disclosed about the prejudicial activities of the detenu suffered by them and due to such prejudicial activities of the detenu, public order in that area was disturbed. It is also stated in the grounds of detention that in the prohibition case, he was released on bail by the Competent Court.

#. Mr. Dave, learned advocate for the petitioner has while arguing the matter, taken me through the petition and the documents attached thereto including the grounds of detention dated 2.11.2002. It is the contention of Mr. Dave that in the Prohibition case relied upon by the Detaining Authority, it is found that seized country liquor was belonging to the detenu and his partner Shaikh Fajal Shaikh Najir and the said country liquor possessed by them without any pass and permit. Another co-accused in the said prohibition case was also arrested by the police namely Shaikh Fajal Shaikh Najir. Mr. Dave, while arguing the matter, has placed on my hand unreported judgement dated 19.5.2003 in case of co-accused of present petitioner namely Shaikh Fajal Shaikh Najir rendered in Special Civil Application No. 192 of 2003, wherein, relying upon the material placed

before the Detaining Authority, the Detaining Authority has passed order of detention detaining detenu Shri Shaikh Fajal Shaikh Najir and dealing with the said petition, the Court (Coram : P.B. Majmudar, J.) has set aside the order of detention issued against that accused on the ground that there is a delay in passing the order of detention. In the said judgement, my brother Justice P.B. Majmudar has considered that the offence was registered against the accused on 16.9.2002 while the Detaining Authority had passed detention order on 2.11.2002 and considering the involvement of the accused in the said offence, which has taken place on 16.9.2002, the Detaining Authority had passed an order of detention on 2.11.2002. The court has also held that there is a delay of 1 month and 15 days in passing the detention order and court had while deciding the said Special Civil Application, referred to the judgement of Special Civil Application No. 5321 of 2002 and the court has reproduce the part of the said judgement, which reads as under :-

> "It appears that the last offence is registered against the detenu on 28.3.2002 and the order of detention has been passed on 30.4.2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgement relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points."

Relying upon the aforesaid judgement, the court (Coram: P.B. Majmudar, J.) had set aside the order of detention on the ground of delay in passing the order as in the said case also, no affidavit was filed by the Detaining Authority explaining such delay.

#. In this petition, same contention is taken in the petition at ground no. 18. It is the contention of the petitioner in the petition that the petitioner was involved in a solitary case, for which, offence was registered on 16.9.2002 and he was enlarged on bail on 23.9.2002. Two statements of the witnesses were recorded on 13.10.2002 and 14.10.2002 and the order of detention was passed on 2.11.2002 and thus, there is delay in passing the order of detention of about one and half month and the Detaining Authority was not in hurry as the statements were verified after sixteen days after the

same were recorded and the order was passed after two days of recording the statements so, there were no compelling circumstances on the part of detaining authority to take such a drastic step after a lapse of substantial time and therefore, on this ground alone the order of detention is required to be set aside.

#. Mr. Nagesh Sud, learned AGP has supported the order of detention and it is his submission that the Detaining Authority has after considering the material, recorded satisfaction that the petitioner detenu is indulging prohibition activities to the maintenance of public order and further that statements were recorded by the police and verified by the Detaining Authority himself, show that at the instance of the detenu, the public order was disturbed at that relevant time and place. The witnesses were afraid by filing complaint against the detenu because of high handedness on the part of the detenu and Detaining Authority has relied upon material placed before him, rightly passed the order of detention detaining the petitioner under the provisions of PASA Act and according to him, there is no delay in passing the order.

#. On considering the submissions made before me and though the court had issued Rule, which was made returnable after 6 weeks as per order dated 17.1.2003, the Detaining Authority has not filed any affidavit dealing with the contentions raised in the petition. The co-accused of the petitioner detenu, who was also detained by the Detaining Authority on the same material namely Shri Shaikh Fajal Shaikh Najir had filed Special Civil Application No. 192 of 2003 and the court had while deciding said Special Civil Application No. 192 of 2003 dated 19.5.2003 held that there is a delay in passing the order of detention and in that case, no affidavit was filed by the Detaining Authority and the court has set aside the order of detention.

#. In view of above discussion and decision of this court in Special Civil Application No. 192 of 2003 and as the Detaining Authority has not filed any affidavit, this court has no alternative but to set aside the order of detention dated 2.11.2002. Accordingly, petition is allowed. The impugned order dated 2.11.2002 passed by the Commissioner of Police, Surat City is quashed and set aside. The detenu Shri Amrutbhai Jivanbhai Marwadi is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.K. Trivedi, J.)

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